

ESTTA Tracking number: **ESTTA616467**

Filing date: **07/18/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213067
Party	Defendant Simmons Veterinary Clinic, Inc.
Correspondence Address	MICHAEL W VARY MCCARTHY LEBIT CRYSTAL & LIFFMAN CO LPA 101 W PROSPECT AVE , SUITE 1800 CLEVELAND, OH 44115-1088 UNITED STATES kmh@mccarthylebit.com, mwv@mccarthylebit.com
Submission	Other Motions/Papers
Filer's Name	Kristen M. Hoover, Esq.
Filer's e-mail	kmh@mccarthylebit.com
Signature	/kmh/
Date	07/18/2014
Attachments	OppositionSettlement.pdf(120648 bytes ) DepositAccountAuthorization.txt(235 bytes )

Authorization is hereby given to charge the deposit account listed below for any fees necessary.

Account #:506315

/kmh/

Kristen Hoover

McCarthy, Lebit, Crystal & Liffman

101 W. Prospect Ave.

Suite 1800

Cleveland, Ohio 44115

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Serial No.: 85/751,742 and 85/920,460 )  
Mark: BARKERITAVILLE )  
Filing Date: October 11, 2012 and )  
May 1, 2013 )  
Published: July 30, 2013 )

Opposition No. 91213067

\_\_\_\_\_  
Margaritaville Enterprises, LLC,

*Opposer,*

v.

Simmons Veterinary Clinic, Inc.,

*Applicant.*

**STIPULATED MOTION PURSUANT TO SETTLEMENT AGREEMENT**

Pursuant to TBMP §§ 605.02 and 605.03(b), Applicant Simmons Veterinary Clinic, Inc. ("Applicant") and Opposer Margaritaville Enterprises, LLC ("Opposer") hereby request the Board enter the following order with regard to Opposition No. 91213067 (the "Opposition").

Applicant and Opposer (collectively, the "Parties") have resolved the Opposition through a settlement agreement ("Settlement Agreement") and the parties hereto agree to an immediate suspension of the Opposition and ultimate dismissal of the Opposition with prejudice subject to the following conditions:

1. Applicant assigns Application Serial No. 85/920,460 to Opposer as set forth in **Exhibit A** attached hereto.

2. The Parties agree that Serial No. 85/751,742 (the " '742 Application"), shall be divided such that Classes 3, 18, 24, 41, 43 and 44 will become a "child" divided application (the "Child Application") and Classes 20, 21, 28 and 31 shall remain in the '742 Application (the "Parent Application").

3. Applicant assigns the "Child Application" with Classes 3, 18, 24, 41, 43 and 44 to Opposer as set forth in Exhibit B attached hereto.

4. Applicant expressly abandons Classes 20, 21 and 28 in the Parent Application, as set forth in Exhibit C attached hereto.

5. Applicant retains the Class 31 in the Parent Application pursuant to the terms of the Settlement Agreement.

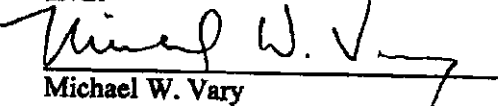
6. Applicant and Opposer request the Opposition be immediately suspended until the Board enters an appropriate order or orders carrying out the above assignments, division, and express abandonment (the "Board Order(s)").

7. After or concurrent with the Board Order(s), Applicant and Opposer agree to dismissal of the Opposition with prejudice.

Dated: July 16, 2014

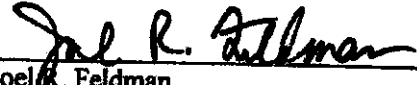
Respectfully submitted,

SIMMONS VETERINARY CLINIC,  
INC.

  
Michael W. Vary  
McCarthy, Lebit, Crystal & Liffman Co. LPA  
101 West Prospect Avenue  
Suite 1800  
Cleveland, Ohio 44115-1088  
mwv@mccarthylebit.com

*Attorney for Applicant*

MARGARITAVILLE ENTERPRISES,  
LLC

  
Joel R. Feldman  
Greenberg Traurig, LLP  
3333 Piedmont Road Northeast  
Suite 2500  
Atlanta, Georgia 30305  
feldmanjoel@gtlaw.com

*Attorney for Opposer*

**EXHIBIT A**

# **Trademark Assignment**

1. **Assignment.** Simmons Veterinary Clinic, Inc., a Florida corporation with an address of 4975 Lake Worth Road, Lake Worth, FL 33463 ("SVCI") assigns to Margaritaville Enterprises, LLC, a Delaware limited liability company with a principal business address of 256 Worth Avenue, Suite Q-R, Palm Beach, FL 33480 ("Margaritaville") all of its right, title, and interest in the trademark BARKERITAVILLE in U.S. Trademark Application Serial No. 85/920460 (the "Mark"), along with (i) the common-law rights in the Mark anywhere in the world, (ii) all goodwill of SVCI's business connected with the Mark, and (iii) the right to pursue claims and recover damages for past infringements of the Mark.

2. **Consideration.** SVCI acknowledges that it has received sufficient consideration in exchange for its assignment of its trademark rights to Margaritaville.

**SIMMONS VETERINARY CLINIC, INC.**

By: 

Name: Kenneth Simmons

Title: President

Date: July 15, 2014

**EXHIBIT B**

# **Trademark Assignment**

1. **Assignment.** Simmons Veterinary Clinic, Inc., a Florida corporation with an address of 4975 Lake Worth Road, Lake Worth, FL 33463 ("SVCI") assigns to Margaritaville Enterprises, LLC, a Delaware limited liability company with a principal business address of 256 Worth Avenue, Suite Q-R, Palm Beach, FL 33480 ("Margaritaville") all of its right, title, and interest in the trademark BARKERITAVILLE in U.S. Trademark in Classes 3, 18, 24, 41, 43, and 44 in Application Serial No. 85/751742 which will be included in a divisional application (a "child" application) assigned Application Serial No. \_\_\_\_\_ (the "Mark"), along with (i) the common-law rights in the Mark anywhere in the world, (ii) all goodwill of SVCI's business connected with the Mark, and (iii) the right to pursue claims and recover damages for past infringements of the Mark.

2. **Consideration.** SVCI acknowledges that it has received sufficient consideration in exchange for its assignment of its trademark rights to Margaritaville.

**SIMMONS VETERINARY CLINIC, INC.**

By: 

Name: Kenneth Simmons

Title: President

Date: July 15, 2014



**EXHIBIT C**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Serial No.: 85/751742 and 85/920460 )  
Mark: BARKERITAVILLE )  
Filing Date: October 11, 2012 and )  
May 1, 2013 )  
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Opposition No. 91213067

Margaritaville Enterprises, LLC. )

*Opposer,* )

v. )

Simmons Veterinary Clinic, Inc.. )

*Applicant.* )

**EXPRESS ABANDONMENT OF CLASSES IN APPLICATION**

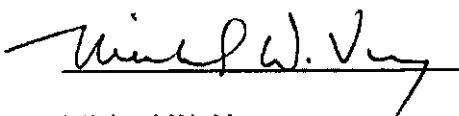
Pursuant to TMEP 718.01, 37 C.F.R. §2.68 and TBMP 602.01, Applicant, Simmons Veterinary Clinic, Inc., hereby expressly abandons Application Serial No. 85/751,742 in Classes 20, 21 and 28. Classes 3, 18, 24, 31, 41, 43 and 44 will remain in Application Serial No. 85/751,742 or its corresponding "child" application.

This abandonment is filed with the consent of Opposer Margaritaville Enterprises, LLC, as indicated by the signature of Opposer's counsel, attached hereto.

Respectfully submitted,

**SIMMONS VETERINARY CLINIC,  
INC.**

Date: July 16, 2014

By: 

Michael W. Vary  
McCarthy, Lebit, Crystal & Liffman Co.  
LPA  
101 West Prospect Avenue  
Suite 1800  
Cleveland, Ohio 44115-1088  
mwv@mccarthylebit.com  
*Attorney for Applicant*

**CONSENT TO EXPRESS ABANDONMENT OF CLASSES IN APPLICATION**

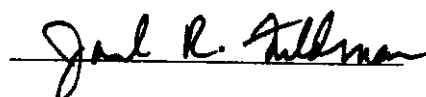
Opposer, Margaritaville Enterprises, LLC, through its counsel, hereby consents to the above Express Abandonment of Application Serial No. 85/751,742 in Classes 20, 21 and 28.

Respectfully submitted,

Date: July 16, 2014

By:

**MARGARITAVILLE  
ENTERPRISES, LLC**

A handwritten signature in black ink, appearing to read "Joel R. Feldman", is written over a horizontal line.

Joel R. Feldman  
Greenberg Traurig LLP  
3333 Piedmont Road Northeast  
Suite 2500  
Atlanta, Georgia 30305  
feldmanjoel@gtlaw.com

*Attorney for Opposer*